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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 TYLER APPEL,

11 Plaintiff,

12 v.

13 KING COUNTY CORRECTIONAL
14 FACILITY,

15 Defendant.

CASE NO. 2:21-cv-00621-MJP-JRC

ORDER TO SHOW CAUSE OR
AMEND PROPOSED COMPLAINT

16 This matter is before the undersigned on referral from the District Court and on plaintiff's
17 motion to proceed *in forma pauperis* ("IFP") and proposed complaint. Dkt. 1. Under 28 U.S.C.
18 § 1915A, the Court screens prisoner complaints such as plaintiff's proposed complaint (Dkt. 1-1)
19 to determine whether the complaint is frivolous, malicious, fails to state a claim upon which
20 relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

21 Here, plaintiff's proposed complaint does not, as drafted, state a claim upon which relief
22 can be granted. However, the Court will offer plaintiff an opportunity to amend his proposed
23 complaint to correct the deficiencies identified in this Order. If plaintiff chooses to
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1 amend his proposed complaint, he must file his amended proposed complaint on the Court's
2 form, on or before **June 25, 2021**. Failure to do so or to comply with this Order will result in the
3 undersigned recommending dismissal of this matter without prejudice.

4 Plaintiff should be aware that should the Court grant his IFP motion, he would be
5 required to make partial payments toward the \$350 filing fee. Because at present, it does not
6 appear that plaintiff has presented this Court with a viable claim for relief, the Court declines to
7 rule on his *in forma pauperis* motion at this time. So, plaintiff has not yet incurred this expense.
8 Instead, the Clerk shall renote the *in forma pauperis* motion for the Court's consideration on
9 June 25, 2021. Thus, if plaintiff chooses not to proceed with this case, he will not be required to
10 make partial payments toward the \$350 filing fee, which is what he would be required to pay if
11 the Court granted plaintiff's request for *in forma pauperis* status at this time.

12 13 DISCUSSION

14 Plaintiff, who is incarcerated in the King County Jail, seeks to bring a claim against the
15 King County Correctional Facility ("KCCF") for violation of his rights under the First
16 Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). Dkt. 1-1,
17 at 4. Plaintiff alleges that in January 2021, he inquired whether there were any religious services
18 or programs provided for Native Americans at KCCF and that KCCF responded that there were
19 no such services or programs provided. Dkt. 1-1, at 5. Plaintiff alleges that he has thus been
20 denied appropriate access and opportunities to participate in ceremonies of his Native American
21 religion. Dkt. 1-1, at 9.

22 He further alleges that on February 15, 2021, he filed a complaint regarding this issue and
23 that KCCF staff offered to allow him a visit with the jail chaplain, who is Christian. Dkt. 1-1, at
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1 9. Plaintiff alleges that this was inadequate because he does not share the same religious
2 affiliation as the chaplain and that this offer is not responsive to his request for access to the
3 religious materials and space needed for his religious ceremonies. Dkt. 1-1, at 9. Plaintiff
4 requests injunctive relief—specifically he requests that KCCF be directed to draft a policy that
5 recognizes and supports his religion and gives him space and resources to exercise his religious
6 ceremonies. Dkt. 1-1, at 14.

7 “Traditionally, the requirements for relief under [§] 1983 have been articulated as: (1) a
8 violation of rights protected by the Constitution or created by federal statute, (2) proximately
9 caused (3) by conduct of a ‘person’ (4) acting under color of state law.” *Crumpton v. Gates*, 947
10 F.2d 1418, 1420 (9th Cir. 1991).

11 Here, plaintiff names the KCCF, but that entity is not a “person” for § 1983 purposes.
12 The KCCF is an entity of King County and, as such, is not a proper defendant in this action. *See*
13 *Nolan v. Snohomish Cnty.*, 59 Wash. App. 876, 883 (1990) (“[I]n a legal action
14 involving a county, the county itself is the only legal entity capable of suing and being sued.”).

15 Plaintiff may amend his complaint to name King County as a defendant. However,
16 plaintiff should be aware that when a plaintiff seeks to proceed against a county under § 1983, he
17 cannot hold the county liable simple because it employs a person who violated his constitutional
18 rights. This is because under § 1983, supervisory liability is not sufficient. Instead, plaintiff
19 must show that “the alleged constitutional deprivation was the product of a policy or custom of
20 the local governmental unit.” *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 793 (9th Cir. 2016)
21 (en banc); *see also Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658 (1978)
22 (explaining theories of liability against a municipality, such as a county).

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1 **CONCLUSION AND DIRECTIONS TO PLAINTIFF AND CLERK’S OFFICE**

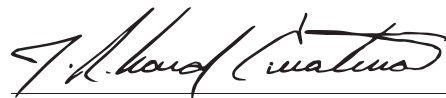
2 Due to the deficiency described above, unless plaintiff shows cause or amends the
3 proposed complaint, the Court will recommend dismissal of the proposed complaint without
4 prejudice. If plaintiff intends to pursue a § 1983 civil rights action, plaintiff must file a signed
5 and dated amended complaint and within the amended complaint, plaintiff must write a short,
6 plain statement telling the Court: (1) each constitutional right or statute that plaintiff believes was
7 violated; (2) the name or names of the person or persons who violated the right; (3) exactly what
8 each individual or entity did or failed to do; (4) how the action or inaction of each individual or
9 entity is connected to the violation of plaintiff’s constitutional rights; and (5) what specific injury
10 plaintiff suffered because of the individuals’ conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–
11 72, 377 (1976).

12 If plaintiff still wishes to pursue a § 1983 claim, then plaintiff shall present the amended
13 complaint on the form provided by the Court. The amended complaint must be legibly written or
14 typed in its entirety, it should be an original and not a copy, it should contain the same case
15 number, and it may not incorporate any part of the original complaint by reference. The
16 amended complaint will act as a complete substitute for the original complaint and not as a
17 supplement. An amended complaint supersedes all previous complaints. *Forsyth v. Humana,*
18 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on other grounds*, *Lacey v. Maricopa*
19 *County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the amended complaint must be complete in
20 itself, and all facts and causes of action alleged in the original complaint that are not alleged in
21 the amended complaint are waived. *Forsyth*, 114 F.3d at 1474. The Court will screen the
22 amended complaint to determine whether it contains factual allegations linking each defendant to
23 the alleged violations of plaintiff’s rights.

1 If plaintiff fails to file an amended complaint or fails to adequately address the issues
2 raised herein on or before **June 25, 2021**, the undersigned will recommend dismissal of this
3 action without prejudice pursuant to 28 U.S.C. § 1915(e).

4 The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
5 civil rights complaint and a copy of this Order. And the Clerk's Office shall renote the motion to
6 proceed *in forma pauperis* (Dkt. 1) for June 25, 2021.

7 Dated this 25th day of May, 2021.

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10 J. Richard Creatura
Chief United States Magistrate Judge